

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

Passed to June 1901.

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1091.

89

No. 22, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, APPELLANT,

?S.

ELIZA J. SCOTT.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 27, 1901.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901.

No. 1091.

No. 22, SPECIAL CALENDAR.

THE DISTRICT OF COLUMBIA, APPELLANT,

v.s.

ELIZA J. SCOTT.

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In the Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, Appellant, }
vs. } No. 1091.
ELIZA J. SCOTT. }

a Supreme Court of the District of Columbia.

ELIZA J. SCOTT } At Law. No. 42612. Certiorari.
vs. }
THE DISTRICT OF COLUMBIA. }

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition. Filed Nov. 22, 1898.*

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT, Petitioner, } At Law. No. 42612.
vs. } In Certiorari.
THE DISTRICT OF COLUMBIA, Re- }
spondent. }

To the justice of the supreme court of the District of Columbia, holding a special term at law:

The petition of Eliza J. Scott showeth:

1. That she is the owner of a freehold estate in the following parcel of land, situated in the city of Washington, District of Columbia, described as "original lot nine, in square 690," as marked on the plan of the said city; that said lot fronts 66 feet on First street east and has a depth of 171 feet, running parallel to the line of C street south; that adjacent to and abutting on said lot is an alley running along the southern boundary thereof from First street east in a westerly direction to a point beyond the western boundary of said lot; that at a point on C street south 100 feet west from the building line on the west side of First street east is the beginning of the eastern line of another alley in said square, which is 35 feet in width; that this alley, running north for a distance of 160 feet

from the building line on C street, connects with the south line of the before-described alley at a point 20 feet south of your petitioner's lot on the eastern line of said alley, and on the western line of said alley at a point 35.1 feet south of your petitioner's lot.

2. That in relation to the said lot there is borne upon the records in the custody of the respondent hereto a certain illegal order directing that the said alley running from C street northerly and meeting the first-described alley, running from First street westerly at the points heretofore designated, shall be paved with vitrified brick throughout the whole of the said alley, and to a point across the said described alley running from First street westerly, abutting upon the lot of your petitioner, and that one-half of the cost of the said alleged improvement shall be borne by the owners of the property abutting thereon and by your petitioner as one of the owners of said abutting property, said lot being described in said order as abutting thereon.

3. That the respondent hereto purports to have made said order on the supposed authority of a provision in the act of Congress approved August 7, 1894, which provision is in the following words: "That hereafter the said Commissioners are authorized and empowered when in their judgment the public health, safety, or comfort require it, or when an application shall be made therefor accompanied by a deposit of one-half of the estimated cost of the work, to improve and repair alleys and sidewalks and construct sewers and sidewalks in the District of Columbia of such form and materials as they may determine, and pay the total cost of such work from the appropriations for assessment and permit work. The said Commissioners shall give notice by advertisement twice a week for two weeks in some newspaper published in the city of Washington of any assessment work proposed to be done by them under this act, designating the location and kind of work to be done, specifying the kind of material to be used, the estimated cost of the improvement, and fixing a time and place when and where property-owners to be assessed can appear and present objections thereto and for hearing thereof."

4. Your petitioner is informed and believes and so avers
3 that the respondent proceeded to the making of the said order complained of upon the application of certain property-owners whose property abuts on the said alley running from C street northerly, and that half the estimated cost of the work proposed did not accompany the said application, as required by law.

5. Your petitioner avers upon information and belief that certain other irregularities appear in the record in the custody of respondent:

- a. That your petitioner is not one of the property-owners who requested the paving of said alley.
- b. That no proper notice, such as required by law, was given to your petitioner as to the work proposed to be done.
- c. That the part of the proposed paving which would abut on your petitioner's lot would not be in the alley beginning on C street

and running northerly, but would be in the alley beginning on First street running easterly.

d. That the advertisement which is part of said record was not properly made according to law.

e. That your petitioner's lot does not abut on said alley described in said advertisement.

f. That your petitioner did not request the making of said order or the doing of said proposed work, was not consulted as to the propriety of or the necessity for the same, and had no opportunity to be heard in relation thereto prior to the making of said order.

g. That such alleged improvement would be without benefit to your petitioner and is not required by the public health, safety, or comfort.

h. That if the said order is proceeded with it will result in a charge on the tax records of your respondent which will be a cloud upon your petitioner's title to her said property, and as the said order now stands upon the said record it lessens the marketable value of your petitioner's property.

Prayers.

Wherefore, premises considered, your petitioner prays:

1. That the United States writ of certiorari may be issued from this court, commanding the District of Columbia to certify immediately to this court a copy of each and every part of the record in its custody relating in any manner to the issuance of an order by said respondent to pave an alley in square 690 and charge any portion of the cost thereof upon the owner of lot 9, in said square, done under the supposed authority of the Commissioners of the District of Columbia by virtue of an act of Congress approved August 7, 1894.

2. That upon the receipt of said record or records the order contained therein for the paving of said alley and charging a portion of the cost of the same to the owner of lot 9, in square 690, may be quashed and annulled by the judgment of this court, either as a whole or as to such part thereof as relates to the paving of a part of the alley, beginning on First street, which abuts on your petitioner's property, as in the opinion of the court appears proper, and that respondent hereto may be directed to cancel said order or so much of said order as may be quashed or annulled on the records in its custody.

ELIZA J. SCOTT.

J. WALTER WHEATLEY,
Att'y for Petitioner.

I certify that I have read the foregoing annexed petition and know the contents thereof; that the facts therein stated as of my own knowledge are true, and those stated on information and belief I believe to be true.

ELIZA J. SCOTT.

Subscribed and sworn to before me this 21st day of September
1898.

[SEAL.]

F. EDWARD MITCHELL,
Notary Public, D. C.

Demurrer.

Filed July 8, 1899.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT
vs.
THE DISTRICT OF COLUMBIA. } At Law. No. 42612.

The defendant says that the petition of the plaintiff in the above-entitled cause is bad in substance, and that the said plaintiff has not stated in her petition such a case as entitles her to the relief therein prayed or any other relief against the defendant. Wherefore the defendant demands the judgment of the court whether it shall make further answer to said petition, and prays to be hence dismissed with its costs.

A. B. DUVALL,
Attorney for Defendant.

Order Overruling Demurrer.

FRIDAY, November 24, 1899.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

ELIZA J. SCOTT, Petitioner, }
 } At Law. No. 42612.
vs. }
THE DISTRICT OF COLUMBIA, Resp't. }

Upon hearing the demurrer of the respondent to the petition herein, it is considered that said demurrer be, and the same is hereby, overruled, with leave to the respondent to answer within fifteen days.

Answer of Respondent.

Filed Dec. 16, 1899.

In the Supreme Court of the District of Columbia.

Now comes the respondent, The District of Columbia, and for return to the writ of certiorari issued in the above-entitled cause cer-

tifies to the court the annexed true and accurate copies of the records in its possession Nov. 23, 1898, the date of the writ aforesaid, relating to the improvement of a portion of the thirty-five-foot alley, in square number 690, in the city of Washington, D. C., opening on C street southeast, and abutting lots 9 and 10, part of original lot

1, fronting 100 feet on north side of C street south and 50.46
7 feet on the west side of First street east, and part of original

lot 1, beginning at a point on the west building line of C street south and fronting 58 feet on First street east, and part of original lot 2, beginning at a point on the north building line of C street south 135 feet from the west line of First street east, fronting 58.92 feet on C street south and 140.92 feet on the said alley, namely:

Copy of advertisement of intention to make the improvement, which said advertisement was published on October 10, October 11, October 21, and October 22, in the Evening Star, a newspaper printed and published in the city of Washington, D. C.

Copy of plat of said square 690, showing the thirty-five-foot alley referred to in said advertisement and lot 9 in said square.

And on the return hereby made this respondent prays that the writ of certiorari issued herein may be quashed and the petition of the said petitioner dismissed.

THE DISTRICT OF COLUMBIA,
By A. B. DUVALL, *Its Attorney.*

Copy of Advertisement.

WASHINGTON, D. C., *October 10, 1898.*

Notice is hereby given that the Commissioners of the District of Columbia intend to make the following-named improvements, which are in their judgment necessary for the public health, safety, and comfort. Assessments for one-half of the cost of the same will be made, as provided in public act No. 171, approved August 7, 1894. Parties who are interested in the proposed work are notified that the said Commissioners will give a hearing on the twenty-sixth day of October, 1898, at 11 o'clock a. m., in the board-room of said
8 Commissioners, to any and all persons who may desire to object thereto.

Pave All Alleys with Vitrified Brick or Asphalt Block.

Portion of 35-foot alley, in square No. 690, opening on C street southeast and abutting lots 9 and 10; part of original lot 1, fronting 100 feet on north side of C street south and 50.46 feet on the west side of First street east, and part of original lot 1, beginning at a point on the west building line of C street south and fronting 58 feet on First street east, and part of original lot 2, beginning at a point on the north building line of C street south 135 feet from the west line

of First street east, fronting 58.92 feet on C street south and 140.92 feet on the said alley.

Estimated cost, \$1,500.

JOHN B. WIGHT,
JOHN W. ROSS,
LANSING H. BEACH,
Commissioners, D. C.

Oct. 10, 11, 21, 22.

(Here follows diagram marked p. 8.)

Motion for Further Return to Writ.

Filed Apr. 24, 1900.

In the Supreme Court of the District of Columbia.

Now comes the petitioner, by her attorney, J. Walter Wheatley, and moves the court to direct a further return to the writ of certiorari issued in the above-entitled cause on the — day of —, A. D. 189—, because of the failure of respondent to return all the proceedings in said cause, and for failure to certify that the return made to writ contained all the acts or proceedings relating to the issuance of the order complained of in the original petition in this cause.

J. WALTER WHEATLEY,
Att'y for Petitioner.

To Andrew B. Duvall, Esq., attorney for respondent:

Please take notice that the above motion will be called to the attention of Mr. Justice Bingham, or the justice presiding in circuit court No. 1, on Friday, the 27th day of April, 1900, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

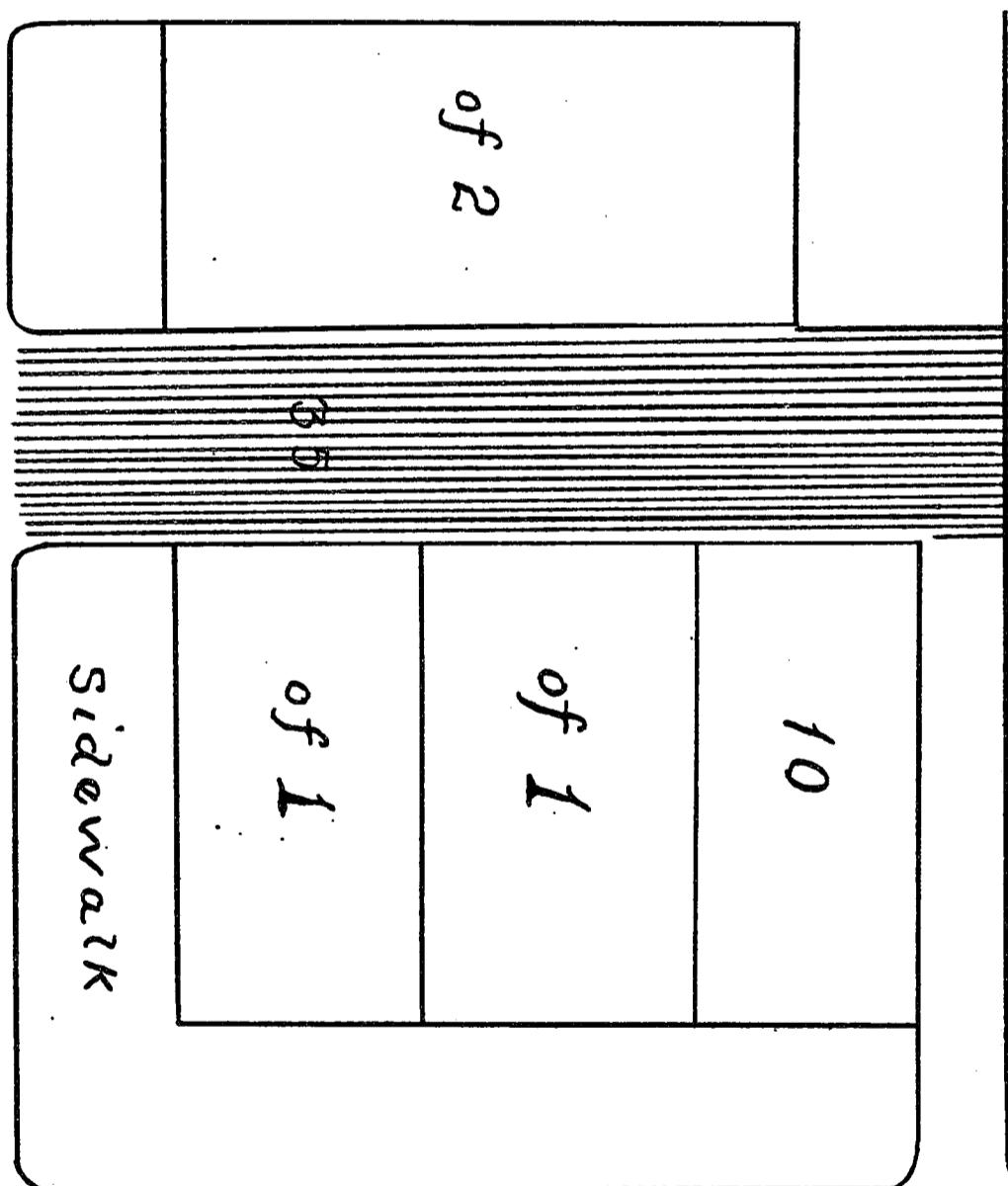
J. WALTER WHEATLEY,
Attorney for Petitioner.

Personally appeared J. Walter Wheatley, who, after being duly sworn according to law, deposed and said as follows:

That in the capacity of attorney for the petitioner in the above-entitled cause and prior to the making of the order complained of in the petition therein, he, as attorney for the now petitioner, went to the office of the respondent to object to the proposed improvement of the alley in square 690 in so far as the same affected the property of petitioner, and among the papers and proceedings then and there shown him he saw and read a letter from one Benjamin F. Shaw, an owner of property abutting on said alley, requesting

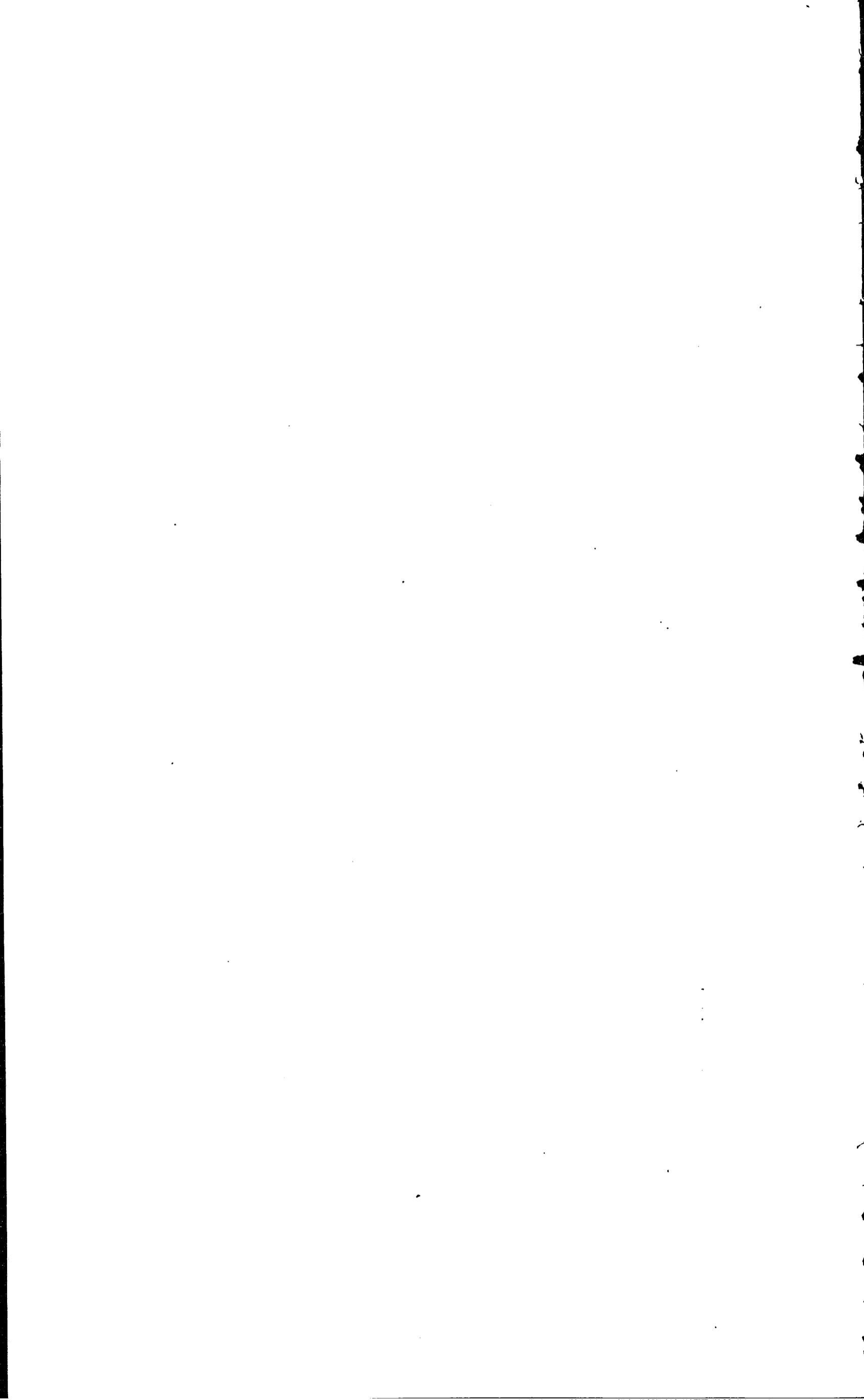
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No 109,
Dist of Col } p. 8
no.
Eliza J. Scott



1st Street.

C Street.



that said improvement be made ; that the said letter does not appear in the return to the writ issued in this cause, and affiant deems it necessary that the same or a copy thereof or some record relating thereto and to other proceedings in the matter of the improvement of said alley be returned to the court, in order that a full, complete, and true showing of the matters in controversy may be made on behalf of the petitioner.

J. WALTER WHEATLEY.

Subscribed and sworn to before me this 21st day of March, 1900.

F. EDWARD MITCHELL,

[SEAL.]

Notary Public.

Order of Court Requiring Further Return.

ELIZA J. SCOTT, Petitioner,

vs.

} At Law. No. 42612.

THE DISTRICT OF COLUMBIA, Respondent. }

11 This cause coming on to be heard on motion of the petitioner for a further return to the writ of certiorari heretofore issued in this cause and counsel upon both sides having been heard, it is, upon consideration, this 25th day of May, 1900, ordered that the defendant certify to this court within ten days from the date of this order a full, true, complete, and accurate copy of any and all papers, proceedings, records, or orders in any manner pertaining or relating to the improvement of an alley in square 690, in the city of Washington, as in the petition in this cause described, and attach thereto the certificate of the officer properly in custody of such paper, proceedings, records, or orders that said return is full and complete to the date of the service of the writ of certiorari in this cause.

E. F. BINGHAM, C. J.

Return of Respondent.

Filed June 5, 1900.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT, Petitioner,

vs.

} At Law. No. 42612.

THE DISTRICT OF COLUMBIA, Respondent. }

Now comes the respondent, The District of Columbia, and for a further return to the writ of certiorari issued in the above-entitled cause certifies to the court the annexed true and accurate copies of the records in its possession on November 23rd, 1898, the date of the service of the writ of certiorari aforesaid, relating to the improvement of a portion of the thirty-five-foot alley in square number 12 690, in the city of Washington, District of Columbia, opening on C street southeast and abutting lots 9 and 10, part of

original lot 1, fronting 100 feet on north side of C street south and 50.46 feet on the west side of First street east, and part of original lot 1, beginning at a point on the west building line of C street south and fronting 58 feet on First street east, and part of original lot 2, beginning at a point on the north building line of C street south 135 feet from the west line of First street east, fronting 58.92 feet on C street south and 140.92 feet on the said alley, being a "full, true, complete, and accurate copy of all papers, proceedings, records, or orders in any manner pertaining or relating to the improvement of an alley in square 690, in the city of Washington, as in the petition in this cause described, and having attached thereto the certificate of the officer properly in custody of such papers, proceedings, records, or orders that said return is full and complete to the date of the service of the writ of certiorari in this cause."

And on the return hereby made this respondent prays that the writ of certiorari issued herein may be quashed, and that the petition of the said petitioner be dismissed.

THE DISTRICT OF COLUMBIA,
By A. B. DUVALL, *Its Attorney.*

MY DEAR MR. ROSS: I spoke to you several days ago in relation to the paving of the alley in square 690, and, thinking that you might have forgotten it, I have taken the liberty to call your attention to it again. Do it for us, and we shall be obliged, and shall ever pray, etc.

(Signed)

SAM'L CROSS.

13 To the Hon. Commissioners.

DEAR SIRS: The alley in front of my stable, in square 690, is in a very bad condition. I have kept it up for 18 years with oyster shells, but I cannot get any now, and the authorities will not let me put them on if I could get them. I would like to have a coat of gravel put on it if that could be done.

I remain yours,

(Signed)

B. F. SHAW.

(# 38, 40, 42, and 44 C street S. E.)

No. 223,179, C. O.

No. 7395, Engineer dep't, vol. B, 1896.

WASHINGTON, D. C., Sept. 25, 1896.

Shaw, B. F., # 38 C St. S. E.,

Calls attention to condition of alley, square 690, and requests same improved.

Action.

Oct. 10TH, 1896.

Respectfully returned to the Engineer Com., D. C. This alley has never been improved. I recommend it be surveyed by the surveyor and be advertised for paving under the ass't system.

H. N. MOSS, S. S.

14

Health department, District of Columbia.

WASHINGTON, Feb. 8, 1897.

Wm. C. Woodward, M. D., health officer, District of Columbia.

SIR: I have the honor to present the following special report relative to the inspection of public alley, in square No. 690, between B, C, 1st street, and New Jersey avenue southeast:

This alley has not been graded or paved, and has depressions and gutters on the surface in wet weather. It is provided with a sewer, but numerous rain-water leaders discharge roof water from the buildings abutting on it upon the surface, and catch-basins are so located that the alley is in a bad condition and needs improving, but is not in an unsanitary condition. There are six box privies in cheap tenement-houses in this alley. If the owners of these houses were required to comply with the law of May 19, 1896, and the plumbing regulations enforced on owners of the other properties, the condition of the alley generally would be improved.

(Signed)

E. W. WHITAKER,
Sanitary Inspector, 4th District.

WASHINGTON, D. C., November 14, 1896.

To the Commissioners of the District of Columbia.

GENTLEMEN: We, the undersigned, tax-payers in the District of Columbia, and property-owners of land in square 690, in said city of Washington, District of Columbia, respectfully submit for your consideration the following facts:

On the 25th day of September last Mr. B. F. Shaw, a property-owner in said square, owning a livery stable with no street frontage except on one side of the said stable, and owning 15 several houses adjoining said stable and having a frontage on C street, sent a communication to the Commissioners relative to the condition of the alley in said square, alleging said condition to be bad and requesting said alley paved.

A communication from Mr. Samuel Cross, referring to a verbal request that said alley be paved, appears from the record in the office of the Commissioners to be the only other request upon which the Commissioners were asked to take such action.

The combined alley frontage of the property of the two gentlemen named does not amount to more than one-twelfth of the entire alley frontage, all of which under the law will be obliged to bear the expense of said improvement proportionately.

Said improvement is in no degree necessary to the majority of the property-owners of said square, and would be peculiarly a convenience to Mr. Shaw, who requests that it be made, because of the fact that he conducts the business of boarding and hiring horses entirely within said alley. The said alley has outlets on three surrounding streets, as will appear from reference to a plat of said square herewith submitted—First street, C street, and B street. Mr. Shaw's stable fronts entirely on the C Street outlet. He is the owner of the alley frontage on one side of said outlet. It is submitted that if Mr. Shaw desires a pavement in said alley, as the same would be peculiarly beneficial to him, that the proper course for him to pursue is to have said C Street outlet paved at his own cost.

Upon said communication the Commissioners have directed the surveyor to inspect the said alley and report on the condition of the same. The surveyor has made said inspection and placed

16 some stakes preparatory to a survey for paving. The matter

has gone so far that we deem it a proper time to call it more directly to the attention of the Commissioners on the behalf of the majority of the property-owners in said square. Therefore we most strenuously protest against the paving of the said alley unless the same be entirely paid for by the property-owners desiring the same to be done. We protest against it because it is unnecessary, because the said alley being unusually large and tortuous, the same would be unduly expensive, because the property-owners who request the same to be done would be sufficiently benefited if the same was paved only in part, and because of the manifest injustice of entailing so much expense upon the property-owners of said square for the benefit of only two, and we request that the surveyor be ordered to desist from further surveys, and that the Commissioners refuse the request of Messrs. Shaw and Cross that the same be paved, unless the same be paid for by the said requesting property-owners.

WILLIAM G. WHEATLEY.

MRS. C. PLATZ.

A. E. JOHNSON, M. D.

MARTHA M. MCKENNA.

MRS. S. FOWLER.

CHARLES E. CLARKE.

Without subscribing to statements in regard to Mr. Shaw or concurring in them regarding the necessity for paving the alley, but averring that the property-owners on said alley have already paid into the public treasury in taxes sufficient to pave said alley over and over again, I protest against such pavement being now done except entirely from the general funds.

R. L. B. CLARKE.

MRS. ALICE SKILLMAN.

R. J. EARNSHAW.

I endorse the sentiments of Mr. R. L. Clarke as above stated.

F. T. CHAMBERLIN, M. D.

MRS. S. A. CHAMBERLIN.

WM. A. RICHARDS,

Executor for Julia Middleton.

CHAS. S. RICHARDS.

AUGUST G. SCHOENBORN.

17

No. 8940, Engineer dept., vol. C, '96.

10971. Health office.

Nov. 14, '96.

Wheatley, William G., *et al.*

Protest against the paving of alley, square 690, unless the same be entirely paid for by property-owners desiring same.

Nov. 30, 1896.

Respectfully returned to the Engineer Commissioner, D.C. I recommend this alley be ordered paved after the usual preliminaries are completed.

The prominence of the neighborhood seems to me to justify the paving of this unimproved alley.

(Signed) H. N. MOSS, *S. S.*

Feb. 3, 1897.

Respectfully referred to health officer, with request for opinion as to whether or not the paving of this alley is necessary for the public health.

(Signed) CHAS. F. POWELL,
Com. D. C.

Feb. 20, '97.

Respectfully returned to the engineer dept., D. C. I hereby certify that the grading and paving of the alley in question is necessary to the public health.

(Signed) WM. C. WOODWARD,
Health Officer.

18

Office of the Commissioners of the District of Columbia.

WASHINGTON, TUESDAY, *May 4, 1897.*

The board met at 11 o'clock a. m.

Present: Commissioners Ross, Truesdell, and Black.

The secretary read aloud the following notice:

Special Notice.

Office of the Commissioners of the District of Columbia.

WASHINGTON, D. C., *March 29, 1897.*

Notice is hereby given that the Commissioners of the District of Columbia intend to

make the following-named improvements, which are, in their judgment, necessary for the public health, safety, and comfort. Assessments for one-half of the cost of the same will be made as provided for in public act No. 171, approved August 7, 1894.

Parties who are interested in the proposed work are notified that the said Commissioners will give a hearing at the District building on the 4th day of May, 1897, at 11 o'clock a. m., to any persons who may desire to object thereto.

* * * *

Pave alley with vitrified or asphalt blocks.

* * * *

19 All alleys in square 690, to be assessed against the lots abutting on said alleys; estimated cost, \$5,876.

* * * *

JOHN W. ROSS,
GEORGE TRUESDELL,
W. M. BLACK,
Commissioners, District of Columbia.

Ap. 19, 20, 26, 27.

After reading, the president inquired whether any one present had objections to present to the proposed work.

J. W. Wheatley, on behalf of William G. Wheatley and others, owners of property in square 690, protested against the paving of certain portions of the alleys in said square, especially that portion leading from the main north and south alley eastward to First street, which, he said, would impose an excessive tax upon lot 9.

He said he had no objections to the paving of the main alley abutting lots 6 and 2.

The secretary read aloud the protests of William G. Wheatley and others against the proposed work (8940, Eng. Dept., C, 1896).

D. W. Middleton objected to the paving of the small — abutting the property on New Jersey avenue and the small alley leading thereto from the main alley.

G. G. Cornish, representing ownership of lot 10, objected to paving east and west alley passing said lot on the ground that it would increase the already great annoyance from the noise and vibration of passing vehicles.

Samuel Cross said that when he and others petitioned for the paving of the alleys in the square he had no idea that any one would object, but thought the paving such a needful and desirable improvement for health and comfort and appearance that every one interested would accede to it. He still

thought the work should be done as a matter of public policy. He said he submitted a written petition for the work, signed by F. B. Shaw, Dr. Mallon, himself, and others (223,179).

R. L. D. Clarke protested against the improvements of the alley at the expense of the owners of the abutting property. He recommended that the alley be made a minor street.

Official copy furnished Engineer department, D. C.

By order:

(Signed)

WILLIAM TINDALL, *Secretary.*

2825.

ENGINEER DEP'T, D. C., *May 4, '97.*

Commissioners, D. C.:

No objections were received to the within-described surface work proposed to be done under the ass't system except the following: Wm. G. Wheatley, D. W. Middleton, G. G. Cornish, and R. L. D. Clarke protested against the paving of a alley in sq. 690.

CAPT. BEACH.

May 5, 1897.

1st endorsement.

MAY 12, 1897.

Resp'y forwarded to the Eng'r Comm'r, D. C., with recommendation that all alleys in square 690 be ordered paved with vitrified block or brick under assessment system—estimated cost, \$5,876—one-half to be assessed against the lots abutting on said alleys.

This work was advertised in a local newspaper Ap'l 19, 20, 26, and 27th, as required by law, and the following objections were received at the public hearing held May 4, 1897, in accordance with the advertisement.

21
J. W. Wheatley, on behalf of Wm. G. Wheatley and others, owners of property in square 690, protested against the paving of certain portions of the alley, especially that portion leading from the main north and south alley eastward to 1st street, which he said would impose an excessive tax on lot 9; had no objections to the paving of the main alley, abutting lots 6 and 2 (8940, E. D., 1896).

D. W. Middleton objected to the paving of the small alley abutting the property on New Jersey avenue and the small alley leading thereto from the main alley.

G. G. Cornish, representing ownership of lot 10, objected to paving east and west alley on the ground that it would increase the already great annoyance from the noise and vibration of passing vehicles.

R. L. D. Clarke protested against the improvement of the alley at the expense of the owners of the abutting property; recommended that the alley be made a minor street.

Samuel Cross and others petitioned for the improvement of the alley (7395, D, 1896).

(Signed) LANSING BEACH,
Capt. of Eng'rs.

22 110-31.

138 P. 214.

Office of the Engineer Commissioner of the District of Columbia.

WASHINGTON, Oct. 31, 1898.

Mr. B. F. Shaw, 38 C street S. E.

DEAR SIR: In reply to request of yourself and others, I have to inform you that the 35-foot alley in square No. 690, opening on C street S. E., has been ordered paved under the assessment system.

Very respectfully,

(Signed)

C. B. HUNT,
Computing Engineer.

(Here follows diagram marked p. 22.)

23

WASHINGTON, February 10th, 1898.

To A. A. Cornish, Esq., 225 13th street S. E.

DEAR SIR: The estimated cost to you for paving the 35' alley, in sq. 690, running from lot 10 to C street, — \$820.00. If you wish the District to do the work, please deposit said amount and this paper with the collector of taxes of the District of Columbia.

Very respectfully yours, — — —,
Captain, Corps of Engineers, U. S. A.

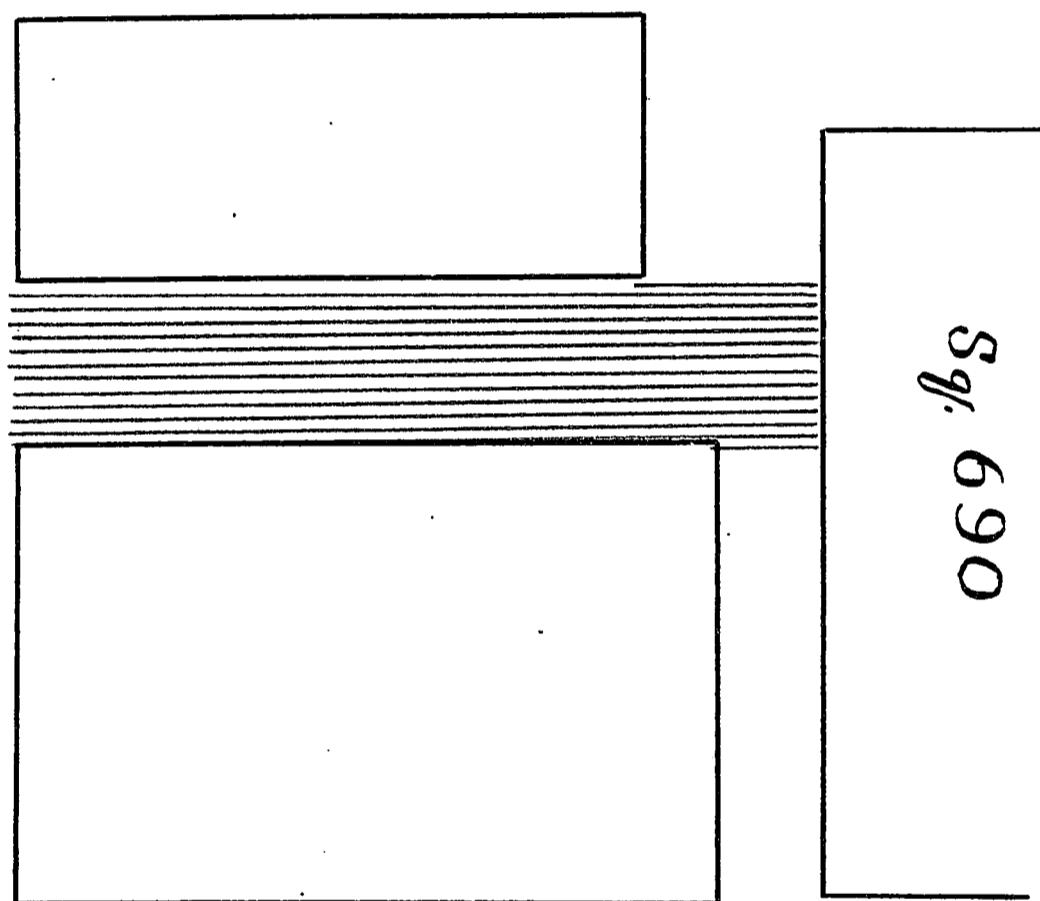
Engineer department, District of Columbia.

WASHINGTON, D. C., February 10th, 1898.

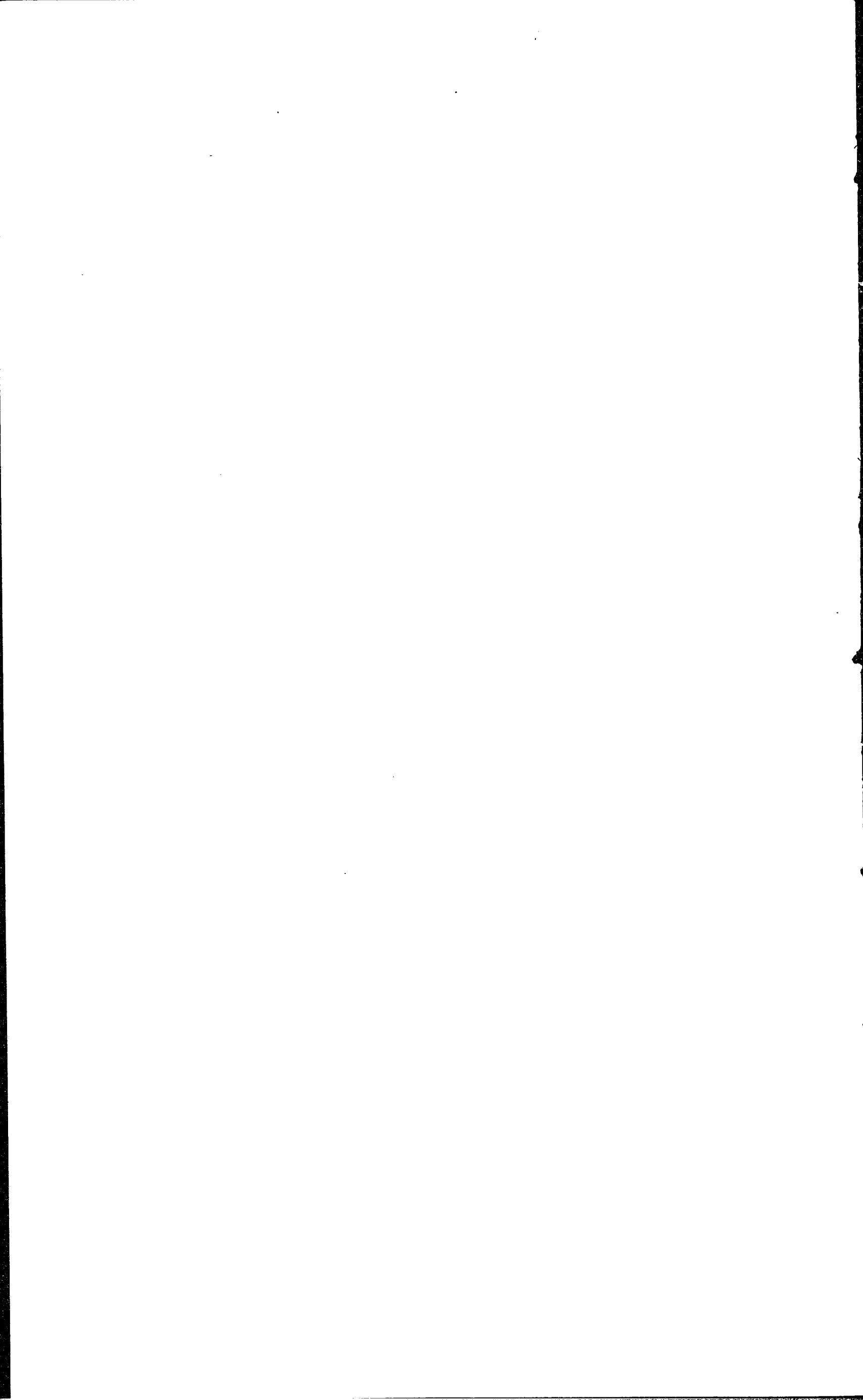
To the Engineer Commissioner, D. C.

SIR: In reference to communication No. 11031, E. D., I have the honor to submit the following estimate for paving that portion of the 35' alley in square 690 running south from the northwest corner of lot 10 to C street and colored red in the accompanying tracing:

C St. S.



1st. Str. E.
Dist. of ^{No. 1091.} _{No.} old } p. 22
Eliza J. Scott. }



820.00 sq. yds. asphalt block pavement at \$2.00.....	\$1,640.00
One-half cost.....	820.00

Very respectfully,
(Signed) JAMES WATSON, *Inspector.*

24

WASHINGTON, *Feb. 10, 1898.*

Mr. G. G. Cornish, 225 1st street S. E.

DEAR SIR: In reply to petition of yourself for A. A. Cornish and others, under date of January 7th, that the 35-foot alley running north and south in square 690 be paved, I have to inform you that upon investigation it is found the signers of said petition represent but one-third of the property abutting on the alley. Before the matter of paving the alley under the assessment system can be taken up it will be necessary for the owners of a majority of the property abutting on the alley to request same.

If, as requested in the petition, the property-owners abutting on the portion of said alley running south from lot 10 to C street wish to have that portion paved, the work can be done under the permit system upon the deposit of one-half the cost of the work, and a blank to enable the necessary deposit to be made, with plat of the portion of alley attached, is enclosed herewith.

It is not deemed advisable to pave a portion only of the 35' alley under the assessment system, but, as before stated, if the owners of a majority of the abutting property request it, the question of paving the whole alley under the assessment system will be taken up.

Very respectfully,
(Signed) LANSING H. BEACH,
Captain, Corps of Engineers.

25

WASHINGTON, *Jan. 7, 1898.*

To the honorable Commissioners of the District of Columbia.

SIRS: The undersigned, owners of property in square # 690, abutting on the 35-foot alley running south from the northwest corner of lot # 10, in said square, to C St. southeast, earnestly request that this alley be paved with asphalt blocks.

The condition of this entire alley from B to C streets southeast, immediately adjacent to the Capitol grounds, is a disgrace to this section of the city.

Your petitioners urge the immediate paving of the whole alley, but, in case this will not be done, they wish the south half paved.

Yours very respectfully,

A. A. CORNISH,
By G. G. CORNISH,
Owner of lot 10, Sq. 690.
B. F. SHAW.
JOSEPHINE D. LOWE.
SUSANNAH FOWLER.

Sqr. 690. Engineer Dep't.

Received Jan. 17, 1898. Eng. Com.

Jan. 7, 1898.

Cornish, A. A., *et al.*

Petition for the paving of the 35' alley running north & south in square No. 690.

26

Jan. 17, '98.

CAPT. BEACH,
Comp'g Engineer.

1st endorsement.

No. 11031.

JAN. 18, 1898.

Respectfully returned. Action recommended favorably on file 2825/97 which, inclosing 7395/96, another petition for this work, was forwarded to the board of Commissioners, D. C., Aug. 4, 1897.

C. B. HUNT,
Computing Engineer.

2nd endorsement.

JAN. 21, 1898.

Returned to the computing engineer for plat showing the property owned by the petitioners.

LANSING H. BEACH,
Capt. Corps of Eng'rs.

3rd endorsement.

No. 11031.

FEB. 10, '98.

Respectfully returned with plat showing that the petitioners represent $\frac{1}{3}$ of the frontage on the 35-foot alley. An estimate and deposit blank under the permit system for the south part of the alley, as per separate plat attached thereto, is also inclosed.C. B. HUNT,
Compt. Engineer.

Writer notified, L. S., vol. 128, p. 150.

File, L. H. B.

4th endorsement.

JULY 18, '98.

Respectfully referred to the computing engineer. The 35' alley running north and south and opening into C street can be advertised for paving in the next advertisement. The paving will run 27 from C street north for the full width of 35' without turn until terminated by the private property just north of the east and west 20-ft. alley.

LANSING H. BEACH,
Captain Corps of Engineers, U. S.,
Engineer Commissioner, D. C.

5th endorsement.

JULY 20, '98.

Forwarded to Mr. Moss, who will please prepare estimate of cost of doing the work stated in the above endorsement, and state what lots are to be assessed.

C. B. HUNT,
Computing Engineer.

6th endorsement.

No. 11031. E. D.

AUG. 2ND, 1898.

Respectfully returned. I recommend that the 35' alley abutting lots 9, 10, of 2 of 1, and of 1, in square No. 690, be advertised to be paved with asphalt blocks under the "assessment system," at an estimated cost of \$1,500.00.

H. N. MOSS,
Supt. of Streets.

7th endorsement.

OCT. 26, '98.

Respectfully forwarded to the Engineer Commissioner, D. C., with recommendation that a portion of the 35-foot alley, in square 690, opening on C street S. E. and abutting lots 9, 10, part of original lot 1, fronting 100 feet on the north side of C street south, 28 and 50.46 feet on the west side of 1st street east, and part of original lot 1, beginning at a point on the west building line of 1st street east 50.46 feet from the north building line of C street south and fronting 58 feet on 1st street east, and part of original lot 2, beginning at a point on the north building line of C street south 135 feet from the west building line of 1st street east, fronting 58.92 feet on C street south and 140.92 feet on the said alley, be paved, under the assessment system, with vitrified or asphalt blocks, at an estimated cost of \$1,500.00, one-half cost of the work to be assessed against the above-named lots. This work is necessary for the public health, safety, and comfort; was advertised in the Washington Post on October 10th and 11th, 21st, and 22nd, 1898, and no objections to the same were received at the hearing held on October 26th, 1898, in accordance with the advertisement.

C. B. HUNT,
Computing Engineer.

Approved Oct. 27, '98.

L. H. BEACH,
Captain, Corps of Engineers.

Ordered by Board of Commissioners, D. C.
Oct. 28, 1898.

A. Y. LAKEMAN, *Chief Cl'r.*

Oct. 31, 1898, writer notified.
Vol. 138, p. 214.

_____,
Comp'g Engineer.

29 Office of the Commissioners of the District of Columbia.

WASHINGTON, FRIDAY, Nov. 4, 1898.

The board met at 11.15 a. m.

Present: Commissioners Wight and Beach.

Commissioner Ross was absent on account of illness.

J. Walter Wheatley appeared on behalf of the owner of lot 9, square 690, and protested against the paving, under the advertised notice of October 10, 1898, of that part of the 35-foot alley in square 690 which crosses the east and west part of said alley abutting said lot.

He said that he objected to the pavement because he did not want to pay for it, as it was only for the convenience of a man who conducts a livery stable on the alley, and not because the improvement was a public necessity. He claimed that the livery-stable proprietor had forestalled objections by two of the other abutting property-owners by agreeing to provide that they should not have to pay for the work.

Commissioner Beach said that the entire alley should be paved, and no doubt would have been paved, but for the fact that it is so wide that the cost to owners of abutting property would have been so large; that if the Commissioners erred at all, it was in extending too much leniency to those at whose expense the work would have been done.

Mr. Wheatley referred to the law of August 7, 1894, on assessment and permit work as requiring an application by a majority of the owners of property abutting the alley, accompanied by a deposit of $\frac{1}{2}$ the estimated cost, and said that the law should be followed in every detail.

30 The Commissioners informed him that they would take his statement under consideration.

(Signed)

W. TINDALL,
Sec'y Board of Commissioners of the District of Columbia.

WASHINGTON, D. C., Nov. 1st, 1898.

To the Commissioners of the District of Columbia:

I hereby enter protest on behalf of Mrs. E. J. Scott, owner of lot 9, in square 690, and on behalf of K. M. Wheatley, owner of stock of coal now stored on said lot, against the contemplated paving of thirty-five foot alley, the upper portion of which abuts on said lot, which improvements, I understand, have been ordered.

Very respectfully,

(Signed)

WALTER WHEATLEY,
Attorney, 490 La. Ave. N. W.

P. S.—Before said improvements are begun I respectfully ask a hearing upon the matter.

(Signed)

WALTER WHEATLEY.

31

No. 11031 / 1. Engineer dep't.

Received Nov. 1, '98.

Wheatley, Walter, att'y, 490 La. Ave. N. W.,

On behalf of owner of lot 9, sq. 690, protests against the paving of 35' alley, square 690; also asks hearing upon the matter.

Office of the Commissioners of the District of Columbia.

WASHINGTON, D. C., *October 10, 1898.*

Notice is hereby given that the Commissioners of the District of Columbia intend to make the following-named improvements, which are, in their judgment, necessary for the public health, safety, and comfort. Assessments for one-half of the cost of the same will be made as provided in public act No. 171, approved August 7, 1894. Parties who are interested in the proposed work are notified that the said Commissioners will give a hearing at the District building on the 26th day of October, 1898, at 11 o'clock a. m., in the board-room of said Commissioners, to any and all persons who may desire to object thereto.

Pave Alleys with Vitrified or Asphalt Block.

Portion of 35-foot alley in square No. 690, opening on C street southeast and abutting lots 9 and 10, part of original lot 1, fronting 100 feet on north side of C street south and 50.46 feet on west side of First street east, and part of original lot 1, beginning at 32 a point on the west building line of First street east 50.46 feet from the north building line of C street south and fronting 58 feet on First street east, and part of original lot 2, beginning at a point on the north building line of C street south 135 feet from the west building line of First street east, fronting 58.92 feet on C street south and 140.92 feet on the said alley.

Estimated cost, \$1,500.

J. B. WIGHT,
J. W. ROSS,
LANSING H. BEACH,
Commissioners, D. C.

This advertisement was published in the Washington Post on October 10, 11, 21, 22, 1898.

WILLIAM TINDALL,
Sec'y Board Comm'rs, D. C.

DISTRICT OF COLUMBIA, *sct:*

I, John W. Daniel, special assessment clerk for the District of Columbia, do hereby certify that the foregoing are full, true, complete, and accurate copies of all papers, proceedings, records, or orders in any manner pertaining or relating to the improvement of the 35-foot alley in square 690, in the city of Washington, referred to in the

petition in the cause of Eliza J. Scott against The District of Columbia, at law, No. 42612; that I am the officer in charge of such papers, records, orders, &c., and that the aforesaid return is full and complete to the date of the service of the writ of certiorari in said cause.

J. W. DANIEL,
Special Assessment Clerk, D. C.

June 4th, 1900.

33

Petition.

Filed Feb. 6, 1901.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT
vs.
DISTRICT OF COLUMBIA. } At Law. No. 42612.

The petition of Eliza J. Scott respectfully shows to the court as follows:

1. That on the 22nd day of November, A. D. 1898, your petitioner filed in this court, in the above-entitled cause, a petition for the issuance of a writ of certiorari to the respondent, The District of Columbia, commanding it to certify to the court a copy of the record of its proceedings relating to a certain order for the paving of an alley in square 690, in the city of Washington, District of Columbia, and the levying of a tax for said improvement against lot 9, in said square, in order that the said proceedings might be quashed by the order of this court because of certain irregularities and illegalities therein, all of which will more fully and particularly appear by reference to the said petition, which is made a part hereof.

2. That upon the said petition and the proceedings thereunder a writ of certiorari was issued, directed to the respondent, directing it to certify all the record in its custody or control to this court; that at the time of the issuance and service of the said writ the proceedings in relation to the improvement of the said alley had reached an order of the respondent directing that the said improvement be made, but actual work upon the same beyond a preliminary survey had not commenced; that thereafter and during the pendency of the

34 proceedings in this cause, and regardless thereof, the respondent hereto proceeded with the said improvement and com-

com- pleted the same, and thereafter, and after the completion of the said improvement, took other and further proceedings in relation to the matter of the said improvement, and levied a certain illegal tax or assessment against your petitioner as the owner of lot 9, in square 690.

3. That the respondent hereto filed in this cause a plat of the said improvement and square and a copy of an advertisement which it desired to be considered as a return to the said writ, and thereafter other proceedings were taken in this cause, which resulted in the

said return being declared to be incomplete, and the respondent was directed to furnish the court with a full and complete return of all the record of proceedings in its custody or control, and thereafter, on the 5th day of June, A. D. 1900, filed in this cause its return of proceedings as far as the order for the making of the said improvement; that at the time of the said return the said improvement had been completed, and your petitioner is informed and believes, and so states, the tax or assessment had been levied, but nothing in the said return indicated the same to the court.

4. That there is now borne upon the tax records in the custody and control of the respondent, as the result of the said improvement and proceedings in relation thereto, a certain illegal and invalid tax against "original lot 9, in square 690," the property of your petitioner, and the respondent hereto threatens to make sale of the same in default of the payment of the said illegal tax or assessment, and that the same is a cloud upon the title of your petitioner.

Wherefore, premises considered, your petitioner prays:

1. That a writ of certiorari may issue out of this honorable court, directed to The District of Columbia, the respondent hereto, 35 commanding it to forthwith certify to this court a full, complete, and properly verified copy of each and every part of the record in its custody or control relating in any manner whatsoever to the paving of an alley in square 690, in the city of Washington, District of Columbia, and the levying of a certain tax or assessment upon "original lot 9," in said square, for the said improvement.

2. That upon the return of the said record or records the said tax or assessment may be quashed and annulled by the order of this court, and the respondent hereto may be directed to cancel the same upon the records in its custody or control.

3. And that your petitioner may be given such other and further relief as in its judgment the court may deem just and proper.

J. WALTER WHEATLEY,
Attorney for Petitioner.

I solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts therein stated as of my own knowledge are true, and those stated upon information and belief I believe to be true.

J. WALTER WHEATLEY.

Subscribed and sworn to before me this 31st day of January, 1901.

J. R. YOUNG, *Clerk,*
By W. E. WILLIAMS, *Ass't Clerk.*

To A. B. Duvall, Esq., attorney for respondent:

Please take notice that I will call the foregoing petition to 36 the attention of Mr. Chief Justice Bingham, in circuit court

No. 1, on Friday, the 8th day of February, 1901, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

J. WALTER WHEATLEY,
Attorney for Petitioner.

Service acknowledged January 31st, 1901.

A. B. DUVALL,
Attorney for Respondent,
By A. L. SINCLAIR.

Order for Respondent to File a Further Return.

FRIDAY, February 8, 1901.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

ELIZA J. SCOTT, Plff, }
vs. } At Law. No. 42612.
THE DISTRICT OF COLUMBIA, Resp't. }

This cause coming on to be heard upon the motion of counsel for a supplemental writ of certiorari, or such other relief as the court might deem proper, and no objection being made thereto, it is ordered that the respondent file herein within ten days a further or supplemental return showing the tax or assessment levied upon original lot 9, in square 690, in the city of Washington, District of Columbia, as in said petition referred to.

37

Additional Return.

Filed Feb. 18, 1901.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT, Petitioner, }
vs. } At Law. No. 42612.
DISTRICT OF COLUMBIA. }

The respondent, The District of Columbia, for further return to the writ of certiorari issued herein and in compliance with the order of the court passed herein on the — day of February, A. D. 1901, files herewith a true and accurate copy of the assessment levied and charged against the property of the petitioner, being lot 9, in square 690, in the District of Columbia, said assessment having been levied against said property for special improvements, consisting of the paving of a 35-foot alley in said square 690; respondent also files herewith a true and accurate copy of the return of service of notice of the said assessment on the petitioner.

And on the return hereby and heretofore made the respondent moves the court to quash the said writ of certiorari and dismiss the petition filed herein.

THE DISTRICT OF COLUMBIA,
By A. B. DUVALL, Its Attorney.

38

No. 149,066.

Special assessment office.

WASHINGTON, D. C., April 13, 1899.

To the honorable the Commissioners of D. C.

GENTLEMEN: I have the honor to submit for approval the following assessment for paving 35-foot alley in square 690 under the acts of Congress approved 7th August, 1894, and June 30th, 1898, and the orders of the Commissioners, D. C., dated Sept. 22, 1890, Jan'y 5, 1892, and October 28th, 1898:

Total cost of the work, \$1,316.56.

One-half to be assessed against abutting property, \$658.28.

Total frontage of abutting property, 331.84 lineal feet.

Rate per front foot, \$1.983727.

Very respectfully,

(Signed)

J. W. DANIEL,
Special Assessment Clerk, D. C.

Assessment and permit work.

Amount assessed against abutting property, being for one-half of the total cost of paving 35-foot alley in square 690, in the city of Washington, District of Columbia, pursuant to acts of Congress approved August 7th, 1894, and June 30th, 1898.

Lot.	Feet abutting on alley.	Feet abutting on work.	In name of—	Amount. Dollars. Cts.
9	35	35	Eliza J. Scott.....	69.43
		331.84		658.28

39

No. 149,066.

Office of the Commissioners, District of Columbia.

WASHINGTON, D. C., April 14th, 1899.

We hereby certify that the foregoing assessment is for an improvement authorized by law and made by us; that it is based upon a statement of costs prepared by us and filed in our office; that it is prorated according to the frontage of the property in question, and that it does not exceed one-half of the total cost of the labor and materials employed in said work.

(Signed)

JOHN W. ROSS,
JOHN B. WIGHT,
LANSING H. BEACH,
Commissioners of the District of Columbia.

Pay to the collector of taxes, D. C.

Special assessment office.

Book 16, folio 178.

WASHINGTON, D. C., *May 2d, 1899.*

Eliza J. Scott—lot No. 9, square No. 690, abutting 35 feet on 35-ft. alley—is charged upon the books of this office for special improvements as follows:

	Dollars. Cents.
For work done under acts of Congress approved August 7th, 1894, and June 30th, 1898, 35 ft. paving, all instalments...	69.43
Interest, at 8 per centum per annum, from — — — — —	
Costs.....	— — — — —
 Total	 — — — — —
Received payment,	— — — — —

Collector of Taxes.

40

Return of Service of Notice.

I hereby certify that the annexed notice is a copy of the original notice of special assessment against lot No. 9, square No. 690, assessed in the name of Eliza J. Scott, for work done under the act of Congress approved August 7th, 1894, and June 30th, 1898, and that said original notice was served by me on the 16th day of May, 1899, in the following manner: by delivering the same to the owner at her residence, # 921 12th street N. W.

(Signed)

A. M. LAMBETH.

Sworn to and subscribed before me this 17th day of May, 1899.

(Signed)

GORDIN W. TROW,

[SEAL.]

Notary Public.

Judgment Quashing Assessment.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT, Petitioner,	} At Law. No. 42612.
vs.	
DISTRICT OF COLUMBIA, Respondent.	} Certiorari.

This cause coming on to be heard on the motion of petitioner for judgment upon the return and answer of respondent hereto, and it appearing to the court that the order for the improvement of the 35-foot alley, in square 690, was made without due and proper notice to the owners of property abutting on said improvement, and that the assessment of the tax for said improvement was made without due and proper notice to said abutting owners, and was not made in proportion to benefits conferred by said im-

provement, but was a proportional part of a fixed and arbitrary sum, it is, this 29th day of March, A. D. 1901, adjudged and ordered that the order of the respondent directing the making of the said improvement be, and the same hereby is, quashed and annulled, together with all proceedings founded upon said order, including the levying of a certain tax against "original lot nine, in square 690," amounting to \$69.42, assessed on the 14th day of April, A. D. 1899, and the respondent, The District of Columbia, is hereby directed to cancel and annul upon the records in its custody or control the aforesaid order for improvement, together with the assessment of tax aforesaid, in so far as the same may in any manner affect "original lot nine, in square 690," in the city of Washington, District of Columbia.

Appeal.

Filed April 2, 1901.

In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT, Petitioner, }
 vs. } At Law. No. 42612.
 DISTRICT OF COLUMBIA, Respondent. }

The clerk will please enter an appeal to the Court of Appeals from the judgment entered in the above-entitled case and issue citation to Eliza J. Scott.

A. B. DUVALL,
Attorney, D. C.

April 1, 1901.

42 In the Supreme Court of the District of Columbia.

ELIZA J. SCOTT }
 vs. } At Law. No. 42612.
 THE DISTRICT OF COLUMBIA. }

The President of the United States to Eliza J. Scott, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 2nd day of April, 1901, wherein The District of Columbia is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 2d day of April, in the year of our Lord one thousand nine hundred and one (1901).

JOHN R. YOUNG, Clerk.

Service of the above citation accepted this — day of —, 190—.
_____,
Attorney for Appellee.

[Endorsed:] No. 42612. Law. Eliza J. Scott vs. The District of Columbia. Citation. Issued April 2d, 1901. Served copy of the within citation on the appellee, Eliza J. Scott, April 10, 1901. Aulick Palmer, marshal. A. B. Duvall, attorney for appellant.

43 Supreme Court of the District of Columbia.

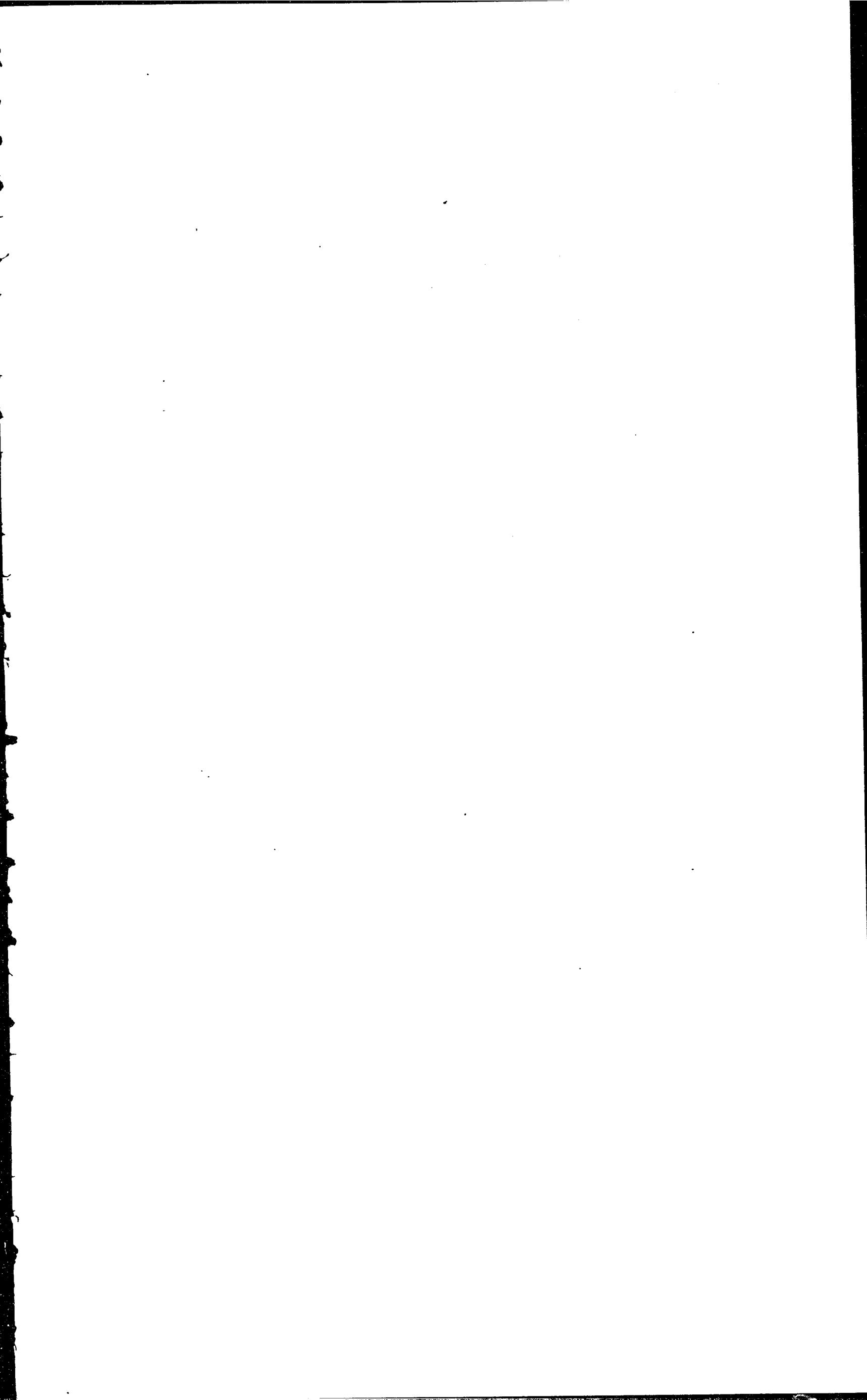
UNITED STATES OF AMERICA, }
 District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 42, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 42612, at law, wherein Eliza J. Scott is petitioner and The District of Columbia is respondent, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia. In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 27th day of April, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1091. The District of Columbia, appellant, vs. Eliza J. Scott. Court of Appeals, District of Columbia. Filed Apr. 27, 1901. Robert Willett, clerk.



IN THE
Court of Appeals, District of Columbia.

APRIL TERM, 1901.

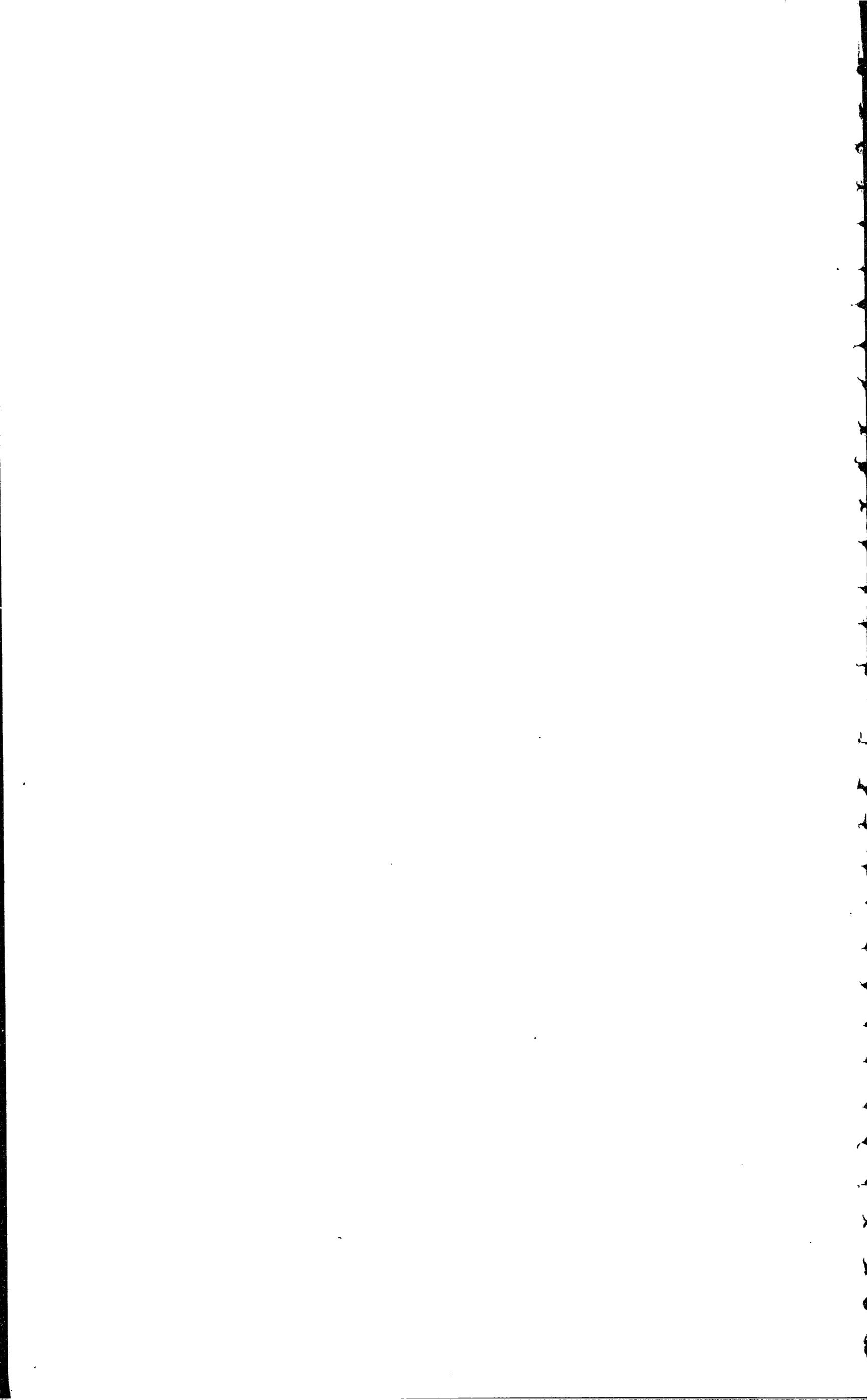
No. 1091.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ELIZA J. SCOTT.

ANDREW B. DUVALL,
CLARENCE A. BRANDENBURG,
Attorneys for Appellant.



IN THE
Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1091.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ELIZA J. SCOTT.

STATEMENT OF FACTS.

This is an appeal by the District of Columbia from a judgment in certiorari rendered by the supreme court of the District of Columbia, quashing an assessment against lot 9, in square 690, for paving an alley.

It appears from the papers constituting the record herein that certain property-owners desired to have the alleys in said square paved. Protests being made and not the requisite number of property-owners consenting thereto, all effort to secure the paving of said alley by consent was abandoned. Most of the proceedings set forth in the record herein relate to that effort, and have no real bearing on the issue now before the court. After the abandonment of that effort, upon recommendation

of the proper officers (Record, p. 5), the Commissioners gave due notice of their intention to pave alleys in said square, the work being necessary, in their judgment, for public health, safety, and comfort, and that they proposed to assess one-half of the cost against the abutting property, as provided by the act of Congress approved August 7, 1894. This notice was dated October 10, 1898, and provided for a public hearing on October 26, 1898, and specifically described the work proposed to be done. This notice was duly published in the *Washington Post*, a newspaper of general circulation in the District of Columbia, on October 10 and 11, 21 and 22, but no objections to the same were received at the public hearing held on October 26, 1898, in accordance with the advertisement. Thereupon, on October 28, 1898, upon recommendation of the computing engineer, the Commissioners ordered that the work covered by said advertisement be done (Record, p. 17). On November 4, 1898, after the work had been ordered, the present attorney for the petitioner appeared at a board meeting of the Commissioners (Record, p. 18), and, on behalf of the appellee, protested against the paving of the alley. All of these protests were duly considered, notwithstanding which the Commissioners, deeming that the work was necessary in the interest of the public health, proceeded to have the work done.

After the work was done an assessment was made in strict accordance with law (Record, p. 23), and the sum of \$69.43 was assessed against lot 9, owned by the appellee. A copy of the original notice of assessment was served personally upon the appellee on May 16, 1899 (Record, p. 24).

All of these facts were shown by the return of the Commissioners, but notwithstanding the supreme court of the District of Columbia, on the 29th day of March, 1901, quashed the assessment for three reasons, as recited in the judgment (Record, p. 24): First, because the order for the improvement

was made without due notice to the owners of property ; second, because the assessment was made without due notice ; and third, because the assessment was not made in proportion to benefits received, but was an arbitrary act.

From the order of the court quashing the assessment this appeal has been prosecuted.

ASSIGNMENT OF ERRORS.

The court below erred :

1. In finding and holding that the order of the Commissioners for the improvement of the alley in square 690 was made without due and proper notice to the owners of property abutting on said improvement.
2. In finding and holding that the assessment of the tax for said improvement was made without due and proper notice to the abutting owners.
3. In finding and holding that said assessment was not made in proportion to benefits received from said improvement.
4. In quashing and annulling the assessment against the land of the appellee.

BRIEF OF ARGUMENT.

As above suggested, the judgment quashing the assessment levied against the property of the appellee recites that it is void for three reasons—first, because the order for the improvement was made without due and proper notice to the owners of the property ; second, because the assessment of the benefit was made without due and proper notice, and third, because the assessment was not made in proportion to the benefits conferred.

The statement of facts as above set forth clearly shows that due and proper notice was given of the purpose of the Commissioners to improve the alley in square 690 and an opportunity offered the appellee to be heard. She did not appear either in person or by attorney and make any protest at the hearing, and the Commissioners thereupon ordered the work to be done. The assessment is in every respect regular, and the determination of the necessity for the work is not open for review.

The third reason recited in the judgment quashing the assessment in this case was unquestionably the principal reason for the action of the court. The court below considered that its action should be controlled by the decision of this court in *Davidson vs. Wight* (16 App. D. C., 371), and by the decision of the Supreme Court of the United States in *Norwood vs. Baker* (172 U. S., 269). The decision of this court, however, in *Davidson vs. Wight* was reversed by the Supreme Court of the United States on April 29, 1901, and in its opinion the court said :

“ We think the Court of Appeals in regarding the decision in *Norwood vs. Baker* as overruling our previous decision in respect of congressional legislation in respect to public, local improvements in the District of Columbia, misconceived the meaning and effect of that decision.”

The Supreme Court of the United States at the same time affirmed the judgment of this court in *Wormley vs. D. C.* (15 App. D. C., 58) sustaining an assessment for laying a curb and sidewalk under the same act of Congress, pursuant to which the alley in square 690 was paved. We think these decisions dispose of this appeal.

We assume, in disposing of this case, the court will deal only with the reasons assigned by the court below for quashing the assessment as set forth in its judgment. However, it was argued below that the land of the petitioner did not abut upon the alley paved. If the court will refer to the

diagram found on page 7 of the record it will be observed that the improvement extended up to the line of lot 9, the property of the appellee, and actually and physically abutted the same, and for that reason we assume there is no force in that objection.

We respectfully submit that the judgment of the supreme court of the District of Columbia quashing the assessment against the land of the appellee should be reversed.

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